

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

UNITED STATES OF AMERICA,)	No. 3:09cr71
)	
Plaintiff)	
)	ORDER
v.)	
)	
BRIAN C. HICKS,)	
)	
Defendant)	

Defendant Brian Hicks moves to dismiss his indictment (Doc. No.9), alleging that 18 U.S.C. § 1519 violates his Fifth Amendment rights. For the reasons set forth below, Defendant's Motion is DENIED as untimely.

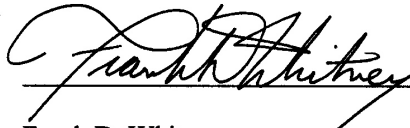
Under Fed. R. Crim. P. 12(c), a "court may, at the arraignment or as soon afterward as practicable, set a deadline for the parties to make pretrial motions and may also schedule a motion hearing." This Court in its Arraignment Order (Doc. No. 6) set deadlines for pretrial motions, both those pretrial motions subject to Fed. R. Crim. P. 12(b)(3) (that deadline being: eight (8) business days before the hearings term of this Court, that term beginning August 3, 2009 -- thus the deadline was Wednesday July 22, 2009) as well as those pretrial motions not subject to Rule 12(b)(3) (that deadline being: eight business days before the trial term, which begins September 8, 2009 -- thus the deadline was Wednesday August 26, 2009). *See* Doc. No. 6 at Paragraph 3.

Defendant filed this Motion today, September 2, 2009. Because this Motion appears to be subject to Rule 12(b)(3)(A) ("a motion alleging a defect in instituting the prosecution"), Defendant should have filed this Motion by July 22, 2009. But even if this Motion is not subject to Rule 12(b)(3), the Defendant should have filed this Motion by August 26, 2009.

Thus the motion is untimely whether or not it is subject to Rule 12(b)(3) and therefore
DENIED.

IT IS SO ORDERED.

Signed: September 2, 2009


Frank D. Whitney
United States District Judge

